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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5th DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE TIRATH S. THAKUR

W.P.No.15535/98

BETWEEN:

Miss K.Saritha Shenoy
D/o.K.V.Shenoy
aged about 22 years
residing at No.20
"Sri Ganesh"
Cholanayakanahalli
R.T.Nagar Post
Bangalore-560 032.

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... Petitioner.

(by Sri.K.G.Raghavan, Adv.)

AND:

The University of Mysore
Manasa Gangothri, Mysore
Represented by its
Registrar.

... Respondent.

(by Sri.Bhrahmarayappa, Adv.)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to declare that the petitioner does not have shortage of attendance and that she is qualified to sit for the ensuing examinations in respect of Previous M.Sc. in Human Development, Department of Studies, Food and Nutrition and direct the respondent University to allow the petitioner herein to take the examinations and further treat the petitioner as a student without shortage of attendance, and further grant interim order to direct the respondent University to conduct a separate practical examination on the 30th May, 1998 along with the final year students by setting a separate question paper and letting the

petitioner to sit for her theory examinations and second practical examination on 16-6-98.

This writ petition is coming on for prly. hearing this day, the court made the following:

O R D E R

The petitioner has in this petition for a mandamus sought a direction restraining the University from preventing her from appearing in the ensuing M.Sc.(Previous) examination on the ground of shortage in attendance.

2. The petitioner's case is that she has attended more than 70% of the classes conducted in various subjects during the academic year ending 30th of April 1998. Her further case is that while she was preparing for the examination she was shocked and surprised to learn on 27th May 1998 that she has not attended the prescribed percentage of lectures and was therefore not eligible for taking the exam. She has sought a

declaration to the effect that she does not suffer from shortage of attendance and that she is qualified to sit in the ensuing examination.

3. Mr.V.C.Brahmarayappa appearing for the University has today filed an affidavit sworn by Dr.Shashikala Puttaraj, Chairperson, Department of Studies in Food Science and Nutrition of the respondent-University.

The affidavit inter alia states that out of 303 lectures including practicals conducted during the academic year 1997-98, the petitioner had attended only 173 lectures which works out to 57.07% of the total.

It is further stated that the Regulations governing Master Degree courses framed by the University require a minimum of 75% attendance as a condition of eligibility for any student to take final examination.

The power to condone any shortage in lectures

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vested in the Vice-Chancellor is exercisable upto 15% and not more than that. Since the petitioner has a shortage of more than 15%, the power to condone the shortage available to the Vice-Chancellor under Regulation 4 even if exercised in her favour would not be of much parsistance.

4. Mr. Raghavan, learned counsel for the petitioner argued that the University ought to have notified to each one of the candidates about the number of lectures attended by him/her so that the students concerned could take remedial action to avoid any shortage in attendance. This was according to the learned counsel essential in the light of a circular issued by the University dated 13th January 1998. He also contended that even independant of any such instructions, it was fair and proper that beofre the students could be declared ineligible they were given a notice of the shortage and an opportunity

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to make up the deficiency if any. He also made a feable attempt to argue that since the petitioner had attended a fairly large number of lectures the attendance recorded by the lecturers concerned may not be entirely trustworthy and may have been manipulated for extraneous reasons.

5. Regulation 4 of the Regulations governing Master Degree Courses in the respondent-University reads as under:

" Each year shall be taken as a unit for purpose of calculation of attendance and a student shall be considered to have completed the attendance for the year, if he has on the whole attended not less than 75% of the number of working periods (lectures, seminars and practicals taken together) during each year.

Shortage of attendance upto 15% may be condoned by the Vice-Chancellor on the recommendation of the Head of the Department on payment of the fee prescribed by the University (i.e. if the attendance is between 75 and 60%) There shall be no condonation

of attendance below 60% during the year. A student who does not satisfy the requirements of attendance shall not be eligible to take the examination."

A plain reading of the above would show that the candidates in order to be eligible for taking the examination must take 75% of the total working periods including lectures, seminars and practicals during the year. The Vice-Chancellor's power to condone any shortage in the said percentage is limited to 15% only. What is important is that the Regulation specifically stipulates that there shall be no condonation of attendance below 60% during the year and declares that a student who does not satisfy the requirements of attendance shall not be eligible to take examination. From the affidavit filed on behalf of the University it is evident that the petitioner had 57.07% of attendance to her credit and is therefore on a plain reading of Regulation 4 ineligible. The argument

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that recording of attendance by its teachers concerned is not faithful and the suggestion that the attendance recorded by them has been deliberately reduced with a view to preventing the petitioner from taking the examination has not impressed me. There is no allegation in the writ petition that the teachers who delivered the lectures on those who conducted the practicals during the year or any one is inimically disposed towards the petitioner so as to justify any further enquiry into any such possibility. It is fairly well settled that allegations of malafides cannot be enquired into unless the same are supported by particulars and unless the persons against whom they are levelled are arrayed as parties to the proceedings. None of these two requirements are satisfied in the instant case. I have therefore no hesitation in rejecting the submission made by Mr. Raghavan that the recording of the attendance of the petitioner was not faithful for extraneous reasons.

I am supported in the view I have taken by the fact that the break up of the attendance of the petitioner shows that the petitioner has not attended the requisite number of lectures i.e. 75% in each one subject.

Mr. Raghavan has produced before me the details of the lectures attended by the petitioner in each subject from which it appears that the petitioner has been consistently absent from the classes and fallen short of requisite percentage in each subject. It is therefore, difficult to see how a student who stays away from the classes can explain his or her absence on the hypothesis that all the teachers may have played a mischief by not recording the attendance properly.

6. Coming then to the alternative submission made by Mr. Raghavan, the regulations do not require any communication to be issued to

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the students whether individually or collectively asking them to attend the classes or informing them about the possibility of shortage in their attendance. The requirement of the Regulation must be presumed to be in the knowledge of each student admitted to the course. It is therefore, the students' duty be diligent and ensure that they attend the requisite number of lectures to be eligible to take the examination. The students cannot shift that duty to the University or claim eligibility even when he or she has not attended the requisite percentage of lectures only because the University has not in accordance with the circular issued by notifying the shortages. Just because the University has issued instructions for notifying the shortages with a view to avoid situations where the students may feel handicapped, would not make any material difference. The circular instructions issued

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on the subject would not create a right in favour of the candidate or supplant the regulation which is specific and mandatory in its very nature.

In the result, I see no reason to interfere. There is no merit in this writ petition which fails and is hereby dismissed.

Sd/-
JUDGE



mpk/-